

REMARKS

Reconsideration of this application, in view of the foregoing amendments and the following remarks, is respectfully requested.

Claim Rejections under 35 USC § 102(e)

Claims 1, 6, 9, 16, 10, 17, 11, 18, 12, 19, 13, 20, 14, 21, 15, 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Miyoshi et al. (US 6738646 B2). Applicant respectfully traverses these rejections.

To anticipate a claim, the reference must teach each and every limitation of the claim. See MPEP §2131. As to claims 1, 15, and 23, Miyoshi et al. does not teach each and every limitation of these claims.

The Examiner has cited claims 1, 7, and figure 10 of Miyoshi et al. as describing limitations of claims 1, 15, and 23. Applicant respectfully points to the Examiner that in cited sections and figure 10, Miyoshi et al. describes a pair of modulation scheme and transmission power level. In a complete contrast, claims 1, 15, and 23 recite a pair that each includes information indicative of a data rate and information indicative of a power level. Miyoshi et al. does not teach this limitation.

Further, in figure 10, Miyoshi et al. describes adjusting transmission power only (*see* elements ST902, ST904, and ST906). In a complete contrast, claims 1, 15, and 23 recite sequentially selecting different ones of the transmit parameter pairs to be the selected transmit parameter pair including information indicative of a data rate and information indicative of a power level. Miyoshi et al. does not teach this limitation either. Miyoshi et al. does not teach each and every limitation of claims 1, 15, and 23 and thus does not anticipate these claims. Accordingly, claims 1, 15, 23, and those depend therefrom are patentably distinguishable from Miyoshi et al.

Claim Rejections -35 USC § 103

Claims 2, 3, 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyoshi et al. (US 6738646 B2) in view of Gesbert et al. (US 6760882 B1). Applicants respectfully traverse these rejections.

Claims 2, 3, 4, and 5 depend from claim 1 and are patentably distinguishable from the combination of cited references for at least the same reasons as claim 1.


Improper Art Citation

Claims 7, 8, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyoshi et al. (US 6738646 B2) and Gesbert et al. (US 6760882 B1) as applied to claims 1, 6, 9, 16, 10, 17, 11, 18, 12, 19, 13, 20, 14, 21, 15, 23, 2, 3, 4, 5 above, and further in view of Darabi et al. (US 6970681 B2).

Applicant respectfully points to the Examiner that the earliest priority date of Darabi et al is November 14, 2001, which is later than the earliest priority date of Applicant's application. The earliest priority date of Applicant's application is January 16, 2001, which is earlier than Darabi et al. Therefore, Darabi et al. is not a proper reference. Applicant respectfully requests the Examiner to withdraw the rejection of claims 7, 8, and 22.

Applicant believes this application and the claims herein to be in a condition for allowance. Please charge any additional fees, or credit overpayment to Deposit Account No. 20-0668. Should the Examiner have further inquiry concerning these matters, please contact the below named attorney for Applicant.

Respectfully submitted,


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